IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3587 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STTE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
FAIZ MOMAHADEKHAN M. SINDHI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/04/2007

ORAL JUDGMENT

1. None present for the respondent, though served. The petitioner has invoked Articles 226 and 227 of the Constitution to challenge the award and order dated 30.11.2005 of Industrial

Tribunal, Ahmedabad in Reference (IT) No.382 of 2002; whereby the punishment of reducing the respondent by three stages in the pay-scale was set aside and the petitioner was ordered to pay wages for the period during which the respondent had remained unemployed due to the initial order of dismissal from service. Admittedly, the petitioner was initially dismissed after a departmental enquiry into charges of negligence in driving, due to which a fatal accident had happened and he was reinstated by virtue of the order dated 30.09.2000 which reduced the punishment to reduction by three stages in the pay-scale. The respondent workman-driver raised an industrial dispute through the trade union and, after perusal of the material placed on record, the Industrial Tribunal arrived at the finding of fact that the charges leveled against the respondent were not proved in the departmental enquiry and hence, no punishment was justified.

2. Learned counsel Mr.H.C. Rawal, appearing for the petitioner, argued that it was a case of *res ipsa loquitur* insofar as, admittedly, the respondent was driving the bus which had collided with a rickshaw coming from opposite direction and the person driving the rickshaw had died due to the accident. He relied upon the judgment of the Supreme Court in **Cholan Roadways Ltd. V/s. G. Thirugnanasambandam [AIR 2005 SC 570]** to point out that, as held in **Thakur Singh V/s. State of Punjab [(2003)9 SCC 208]**, where the bus driven over a bridge fell into canal, the doctrine of *res ipsa loquitur* was applied and the burden was held to have shifted on the man who was in control of the automobile to establish that the accident did not happen due to his negligence. It was emphasised that it is now well-settled that a *quasi judicial* authority must pose unto itself a correct question so as to arrive at a correct finding of fact. In the facts of that case, the principle of *res ipsa loquitur* was relevant and the Tribunal had failed to take

into consideration the relevant facts of the accident though passengers of the bus might not have been examined in the inquiry.

3. In the facts of the present case, not only that the Tribunal has arrived at the finding of fact after elaborate discussion of the evidence and material placed before it but it appears that defence of the driver that the accident was inevitable in the peculiar facts of rains, failure of brake of the bus and absence of negligence on his part were not even challenged in his cross-examination. The petitioner had chosen to rely only upon report of the reporter who, in turn, had relied upon the papers of investigation prepared by the police for the purpose of prosecution. Thus, there was absence of any direct or indirect evidence and neither the police who had recorded the statements of the witnesses nor those witnesses were examined in the enquiry. On the other hand, on the basis of the same material gathered by the investigating agency for criminal prosecution, the respondent

was acquitted in the criminal case. In such circumstances, even as the charges of negligence or violation of any precautionary rules were required to be proved by relevant material and preponderance of probabilities, there was complete absence of any evidence worth the name. Therefore, the Tribunal was justified in allowing the reference on the basis of the findings of fact which are not shown to be, in any way, perverse or illegal. In fact, the petitioner has not cared to produce any part of the material placed before the Enquiry Officer or the Industrial Tribunal to substantiate the plea of perversity.

4. In the facts and for the reasons discussed hereinabove, the petition is dismissed and Notice is discharged with no order as to costs.

(D.H.WAGHELA, J.)

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